



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 1, 2004

Mr. Ron G. MacFarlane, Jr.
Sifford, Anderson, Vice & MacFarlane, L.L.P.
Bryan Tower, Suite 2050
2001 Bryan Street
Dallas, Texas 75201

OR2004-7431

Dear Mr. MacFarlane:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 208678.

The Cedar Hill Police Department (the "department"), which you represent, received a request for the employment application and IAD resumes of three named police officers. You claim that portions of the requested information are excepted from disclosure under sections 552.117 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you state, and provide documentation showing, that the department sought clarification of the request for "IAD resumes" from the requestor. *See* Gov't Code § 552.222(b) (stating that if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used). The department had not received the requested clarification as of the date that it requested a ruling from this office. Accordingly, we conclude that the department need not respond to the request for IAD resumes until it receives the requestor's clarification. We note, however, that when the department receives the clarification, it must seek a ruling from this office before withholding any information that may be responsive to this portion of the request. *See* Open Records Decision No. 663 (1999) (providing for tolling of ten business day deadline for requesting attorney general decision while governmental body awaits clarification). Further, we note that "the ten-day deadline is tolled during the [clarification or narrowing] process but resumes, upon receipt of the clarification or narrowing response, on the day that

the clarification is received.” ORD 663 at 5. Thus, the department’s deadlines for requesting a ruling from this office with respect to IAD resumes will resume upon the department’s receipt of the requestor’s response.

In regard to the remaining requested information, you claim that the information you have marked is excepted from disclosure pursuant to section 552.117 of the Government Code. Section 552.117(a)(2) excepts the home address and telephone number, social security number, and family member information of a peace officer¹ regardless of whether the officer made an election under section 552.024 of the Government Code. Therefore, we agree that most of the personal information you have marked, and the additional information we have marked, must be withheld under section 552.117(a)(2) of the Government Code. We note, however, that section 552.117(a)(2) is inapplicable to the work address and phone number you have marked, and thus they may not be withheld on this basis.

Additionally, we note the submitted documents contain information relating to peace officers who are not employed by the department. This information may be subject to section 552.1175 of the Government Code, which provides in part:

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

- (1) chooses to restrict public access to the information; and
- (2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov’t Code § 552.1175(b). If these individuals are still peace officers and elect to restrict access to their personal information in accordance with section 552.1175, the department must withhold this information. *See, e.g.,* Open Records Decision No. 678 (2003). Otherwise, this information must be released.

Finally, section 552.130 of the Government Code prohibits the release of information that relates to a motor vehicle operator’s or driver’s license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state or a personal identification document issued by an agency of this state or authorized local agency. *See* Gov’t Code § 552.130. Accordingly, we agree that the department must withhold the section 552.130 information you have marked.

¹“Peace officer” is defined by article 2.12 of the Code of Criminal Procedure.

In summary, we conclude that: 1) the department need not respond to the request for IAD resumes until it receives the requestor's clarification; 2) the department must withhold the submitted section 552.117 and 552.130 information; and 3) if the remaining individuals are currently licensed peace officers who comply with section 552.1175(b), the department must withhold their personal information. All remaining submitted information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or

complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



W. Montgomery Meitler
Assistant Attorney General
Open Records Division

WMM/krl

Ref: ID# 208678

Enc: Submitted documents

c: Ms. Temple Anderson
1357 Middleton Drive
Cedar Hill, Texas 75104
(w/o enclosures)